

46 Am. Jur. 2d Judges § 81

American Jurisprudence, Second Edition | February 2022 Update

Judges

Glenda K. Harnad, J.D.; and Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.

IX. Disqualification to Act in Particular Case

A. Disqualification to Act in Particular Case, in General

§ 81. Statutes governing disqualification of judge

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Judges](#)  39, 40

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[Disqualification of judge under 28 U.S.C.A. s 455\(b\)\(4\), providing for disqualification where judge has financial or other interest in proceeding](#), 163 A.L.R. Fed. 575

The disqualification of trial judges is an aspect of the judicial system that is subject to reasonable legislative regulation,¹ although such regulations are subject to constitutional requirements with respect to uniformity and impartiality of operation.² Most disputes over the disqualification of judges will thus be resolved without resort to the Constitution; that is, legislative or Judicial Codes of Conduct will generally be resorted to in resolving judicial disqualification questions.³ Statutes governing disqualification of judges are meant to be self-enforcing.⁴

Practice Tip:

New statutory disqualification provisions will not be applied retroactively.⁵

The purpose of a judicial recusal statute requiring a judge to disqualify him- or herself when the judge's impartiality might reasonably be questioned is to promote public confidence in the integrity of the judicial process.⁶ However, a disqualification statute is not intended as an instrument to secure delays or postponement of a trial,⁷ and should not be employed to produce inconvenience and absurdity.⁸

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Footnotes

- 1 Industrial Indemnity Co. v. Superior Court, 214 Cal. App. 3d 259, 262 Cal. Rptr. 544 (1st Dist. 1989).
- 2 § 82.
- 3 State v. Shackelford, 155 Idaho 454, 314 P.3d 136 (2013).
- 4 Pope v. State, 257 Ga. 32, 354 S.E.2d 429 (1987).
- 5 Pueblo of Laguna v. Cillessen & Son, Inc., 1984-NMSC-060, 101 N.M. 341, 682 P.2d 197 (1984).
- 6 Clemmons v. Wolfe, 377 F.3d 322 (3d Cir. 2004); In re Advisory Letter No. 7-11 of Supreme Court Advisory Committee on Extrajudicial Activities, 213 N.J. 63, 61 A.3d 136 (2013).
- 7 State ex rel. Leavitt v. District Court of Thirteenth Judicial Dist. In and For Yellowstone County, 172 Mont. 12, 560 P.2d 517 (1977).
- 8 City of Kansas City v. Wiley, 697 S.W.2d 240 (Mo. Ct. App. W.D. 1985).

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